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Therefore, it seems not unreasonable to bar the holder if his failure to make known his loss has been a proximate cause in the payment on the forgery. It has been held that an ordinary bank depositor whose signature has been forged may be barred by his negligence if he fails to give prompt notice of an error in his monthly statement. *Dana* v. *National Bank*, 132 Mass. 156. In the traveler's check the relation between the holder and the issuing bank, although not as close and continuous, is analogous to that of banker and depositor. The decision in the lower court was in accord with this view. 142 N. Y. Supp. 307.

BILLS AND NOTES — STATUTES — NEGOTIABLE INSTRUMENTS LAW: EFFECT ON STATUTE MAKING GAMBLING NOTES VOID. — A statute declared void all notes given for a gambling consideration. Sections 55 and 57 of the Negotiable Instruments Law, subsequently adopted, provide that the title of a person who negotiates an instrument is defective when obtained for an illegal consideration, and that a holder in due course holds the instrument free from any defect of title of prior parties, and from defenses available to prior parties among themselves. The plaintiff was a *bonâ fide* holder for value of a note given for a gambling consideration. *Held*, that the plaintiff cannot recover. *Martin* v. *Hess*, 71 Leg. Int. 148 (Munic. Ct. Phila., Feb. 25, 1914).

By the law merchant, illegality of consideration, although created by statute, is only an equitable defense. *Hopmeyer* v. *Frederick*, 74 Ill. App. 301. See *Sondheim* v. *Gilbert*, 117 Ind. 71, 76, 18 N. E. 687. But it is well settled that even a *bonâ fide* purchaser for value cannot recover, where a statute declares the instrument absolutely void. *Bowyer* v. *Bampton*, 2 Strange, 1155; *Unger* v. *Boas*, 13 Pa. 601. The principal case presents the question whether the Negotiable Instruments Law repeals the previous voiding statute, and makes the defense only personal. Since the uniform law provides that the title of one who obtains an instrument for illegal consideration is defective, and that a holder in due course takes free of defects of title of prior parties, it has been held that the former statute is repealed by necessary implication. *Wirt* v. *Stubblefield*, 17 App. Cas. (D. C.) 283; *Klar* v. *Kostiuk*, 65 N. Y. Misc. 199, 119 N. Y. Supp. 683. *Contra*, *Alexander* v. *Hazelrigg*, 123 Ky. 677, 97 S. W. 353. But this construction of the Negotiable Instruments Law, although it tends to promote the free circulation of negotiable paper, seems improper; for the gambling statute voids the instrument in its inception, and the case is properly not one of defective title, but rather one where no negotiable instrument has ever come into existence. The Negotiable Instruments Law therefore seems to have no application. See *Klar* v. *Kostiuk*, 65 N. Y. Misc. 199, 202, 119 N. Y. Supp. 683, 686; 59 U. OF PA. L. REV. 489. Moreover, in view of the strong policy in favor of the gambling statute, a repeal of it should be clear and unambiguous. *Alexander* v. *Hazelrigg*, *supra*. The decision of the principal case would therefore seem correct.

CONFLICT OF LAWS — MAKING AND VALIDITY OF CONTRACTS — FORMAL VALIDITY: WHAT LAW GOVERNS. — The plaintiff and the defendant contracted in Oklahoma for the sale of land in North Dakota. The plaintiff sued in Oklahoma for breach of the contract, and the defendant relied upon the North Dakota statute of frauds. *Held*, that the law of North Dakota governs. *Baird Investment Co.* v. *Harris*, 209 Fed. 291 (C. C. A., Eighth Circ.).

The formal, not the essential, validity of the contract is here involved. See article by Professor Beale, 23 HARV. L. REV. 1, 3. On principle, of course, both should be governed by the law of the place where the contract is made, since only the law that applies to the acts of the parties can annex to their promises an obligation of performance. See article by Professor Beale, 23 HARV. L. REV. 260, 270. But it is now too late to argue for the true doctrine as respects essential validity. Usually, however, it is correctly held that formal validity de-

pends on the *lex loci contractus*, on the principle *locus regit actum*. *Hunt* v. *Jones*, 12 R. I. 265. See DICEY, CONFLICT OF LAWS, 2 ed., 540. This is the better view, even in contracts for the sale of land. See *Cochran* v. *Ward*, 5 Ind. App. 89, 93, 29 N. E. 795, 796; WHARTON, CONFLICT OF LAWS, 3 ed., § 693 *b*. Dicey, however, states that in such contracts the *lex situs* governs as to formal validity. See DICEY, CONFLICT OF LAWS, 2 ed., 503, 542. The principal case in result supports this exception, for which there is some American authority. *Meylink* v. *Rhea*, 123 Ia. 310, 98 N. W. 779. See *Bissell* v. *Terry*, 69 Ill. 184, 190. Of course if the *lex situs* refuses to recognize that an interest in the land has been created by such a contract, relief *in rem* cannot be obtained. This, however, should not prevent relief *in personam* by way of damages such as was sought in the principal case. See 21 HARV. L. REV. 365.

CONTRACTS — RESTRAINT OF TRADE — VALIDITY OF RESTRICTIONS AGAINST COMPETITION IN EMPLOYMENT CONTRACT. — The defendant, on accepting employment in the plaintiff's pathological laboratory in London, agreed not to engage in any similar work within ten miles of the plaintiff's laboratory, no limit of time being expressed. The defendant later set up a rival laboratory within the ten-mile limit, and the plaintiff seeks to enjoin him. *Held*, that an injunction will not be granted. *Eastes* v. *Ross*, [1914] 1 Ch. 468.

If the restraint of trade imposed is reasonable with reference to the interests of the parties and the public, the contract will be upheld. *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.*, [1894] A. C. 535; *Oakdale Mfg. Co.* v. *Garst*, 18 R. I. 484, 28 Atl. 973. So an agreement, on the sale of good will, that the vendor, during his life, will not compete within a reasonable distance of his vendee, is valid. *Marshalls* v. *Leek*, 17 T. L. R. 26; *Wood* v. *Whitehead Bros. Co.*, 165 N. Y. 545, 59 N. E. 357. If the object of a contract, with restrictions similar to those in the principal case, is to protect the employer's trade secrets, it will also be upheld. *Haynes* v. *Doman*, [1899] 2 Ch. 13. There is a strong policy in favor of making possible an effective sale of good will, and of protecting a trade secret just as any tangible asset of its owner. If, therefore, such a contract is reasonable with reference to the interests of the parties, it is clearly valid. See *Mason* v. *Provident C. & S. Co.*, [1913] A. C. 724, 738, 740. The only object of the contract in the principal case is to prevent a possible competition by the defendant in the future. And while this does not furnish so strong an argument in favor of validity as the above factors, such contracts are not, in themselves, against public policy, even in America. *Davies* v. *Racer*, 72 Hun. (N. Y.) 43, 25 N. Y. Supp. 293. The restriction, as regards time and space, would seem on the facts no larger than necessary for the protection of the plaintiff and his assignees. The decision in the principal case therefore seems questionable. The court further touches on the undesirability of depriving the public of the services of the defendants, a consideration not emphasized hitherto in the recent English cases. But this consideration apparently has not been sufficient to overthrow contracts between employer and employee, even in our courts.

CORPORATIONS — ULTRA VIRES — CONTINUING CONTRACT MADE FOR AN UNAUTHORIZED PURPOSE. — In a suit for the breach of a continuing contract to buy coal, the defendant, an interstate carrier (now plaintiff-in-error), introduced evidence that it had made the contract with the dominant purpose to resell the coal. The court's charge permitted recovery whether or not the vendor knew or had means of knowledge that the railroad was engaged in the business of merchandizing coal. *Held*, that the plaintiff cannot recover if it knows, or is chargeable with knowledge of, the railroad's unlawful purpose. *Chesapeake & O. R. Co.* v. *McKell*, 209 Fed. 514 (C. C. A., 6th Circ.).